

## CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Angel Riddle	Team: Squad #5	CCRB Case #: 202001855	<input type="checkbox"/> Force	<input checked="" type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Saturday, 02/22/2020 12:40 AM	Location of Incident: § 87(2)(b)	Precinct: 67	18 Mo. SOL 8/22/2021	EO SOL 4/8/2022	
Date/Time CV Reported Sat, 02/22/2020 1:00 AM	CV Reported At: IAB	How CV Reported: Phone	Date/Time Received at CCRB Thu, 03/05/2020 9:44 AM		

Complainant/Victim	Type	Home Address
§ 87(2)(b)	§ 87(2)(b)	§ 87(2)(b)

Witness(es)	Home Address
§ 87(2)(b)	§ 87(2)(b)
§ 87(2)(b)	§ 87(2)(b)

Subject Officer(s)	Shield	TaxID	Command
1. POM Nicholas Cardieri	11420	965968	067 PCT

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. POM David Yusim	08592	962183	067 PCT
2. POM Ramon Lopez	23196	950778	067 PCT
3. PO Konstantin Nuksha	14008	963671	067 PCT
4. POM Matthew Kelly	09342	960754	067 PCT
5. POM Ethan Chan	04717	956512	067 PCT
6. POF Jacqueline Vista	06394	962155	067 PCT
7. POF Diana Carrillo	16586	960330	067 PCT
8. POM David Goldman	24217	945770	067 PCT
9. SGT Hans Lazo	4297	927067	067 PCT
10. POM Vito Polisenio	18478	951070	067 PCT
11. POM Delaney Warner	15972	967720	067 PCT

Officer(s)	Allegation	Investigator Recommendation
A.POM Nicholas Cardieri	Discourtesy: Police Officer Nicholas Cardieri spoke discourteously to § 87(2)(b)	§ 87(2)(b)
B.POM Nicholas Cardieri	Abuse: Police Officer Nicholas Cardieri threatened § 87(2)(b) with the use of force.	§ 87(2)(b)
C.POM Nicholas Cardieri	Abuse: Police Officer Nicholas Cardieri threatened to arrest § 87(2)(b)	§ 87(2)(b)

## Case Summary

On February 22, 2020, § 87(2)(b) filed this complaint over the phone with IAB, generating original log #20-5736. The CCRB received the complaint on March 5, 2020.

On February 22, 2020, at approximately 12:40 a.m., in the vicinity of § 87(2)(b) in Brooklyn, § 87(2)(b) got into a verbal dispute with an unidentified neighbor outside of his home. § 87(2)(b)'s brother, § 87(2)(b) was involved in the dispute, and another neighbor, § 87(2)(b) witnessed the incident. Both § 87(2)(b) and the unidentified neighbor called 911 and reported that the other had a weapon. Numerous officers from the 67<sup>th</sup> Precinct responded to the scene, including Police Officer Nicholas Cardieri. The officers separated the parties, and eventually it became clear that the incident would not result in any enforcement action. Near the conclusion of the incident, PO Cardieri allegedly told § 87(2)(b) "I'm gonna fuck you up" (**Allegation A: Discourtesy**, § 87(2)(g); **Allegation B: Abuse of Authority**, § 87(2)(g)). PO Cardieri threatened to arrest § 87(2)(b) (**Allegation C: Abuse of Authority**, § 87(2)(g)).

The investigation obtained BWC footage from nine of the 12 officers who were present for any portion of the incident (**Board Review 02-10**, summarized at **Board Review 15-23**). PO Cardieri and Police Officer Ethan Chan did not have any footage, and both noted in their memo books that their BWCs were malfunctioning on the date of the incident (**Board Review 13**). Police Officer David Goldman also did not have any BWC footage and did not have any memo book entry about a malfunctioning camera, but the investigation confirmed through footage review that he did not arrive until the conclusion of the incident and would not have been required to activate his BWC as per the Patrol Guide. All the officers deactivated their BWCs prior to the portion of the incident in which PO Cardieri allegedly made the remarks described above, which also was not in contravention of the Patrol Guide's regulations.

This investigation was delayed by the COVID-19 pandemic, especially with regard to delays in scheduling officer interviews.

## Findings and Recommendations

- **Allegation (A) Discourtesy: Police Officer Nicholas Cardieri spoke discourteously to § 87(2)(b).**  
**Allegation (B) Abuse of Authority: Police Officer Nicholas Cardieri threatened § 87(2)(b) with the use of force.**  
**Allegation (C) Abuse of Authority: Police Officer Nicholas Cardieri threatened to arrest § 87(2)(b).**

§ 87(2)(b) made statements about the incident when she filed the complaint with IAB (**Board Review 24**), in an initial phone call with the CCRB (**Board Review 25**), and during a formal CCRB phone interview (**Board Review 26**). Her account of these allegations remained largely consistent throughout her testimonies. She recounted that she and § 87(2)(b) were unloading grocery bags from her car when her neighbor became upset and told her not to leave garbage outside of his home. A verbal dispute ensued, after which the neighbor ran back inside his house. § 87(2)(b) went to retrieve a crowbar from the car, the neighbor returned with a knife, and § 87(2)(b) called 911. Officers split up the parties and soon allowed the neighbor to return to his home. § 87(2)(b) complained to the officers that they had not listened to her side of the story. Police Officer David Yusim told her that he had already questioned her, and § 87(2)(b) retorted that he was lying. PO Cardieri approached, and § 87(2)(b) told him that PO Yusim was lying. PO Cardieri responded, "I'm gonna fuck you up." § 87(2)(b) said, "You're gonna

fuck me up? What kind of officer tells a person that?” PO Cardieri replied, “If you don’t go home, I’m gonna lock you up.” In her initial phone statement, § 87(2)(b) alleged that PO Cardieri repeated his threat to arrest her again shortly afterward. § 87(2)(b) began to raise her voice, and ultimately § 87(2)(b) and § 87(2)(b) escorted her to the opposite side of the street to wait for the officers to leave.

§ 87(2)(b) recounted that PO Cardieri was particularly “disrespectful” to § 87(2)(b) and he recalled that he was speaking with other officers when he heard § 87(2)(b) begin to raise her voice while speaking to PO Cardieri (**Board Review 11**). § 87(2)(b) alluded to PO Cardieri “using a word he was not supposed to use with citizens.” However, he ultimately could not recall what PO Cardieri said, and he could not recall whether PO Cardieri used the word “fuck” or said, “I’m gonna fuck you up.” § 87(2)(b) did recall PO Cardieri using the phrase, “...lock you up,” and he testified that PO Cardieri used it in relation to ordering them off the neighbor’s property.

§ 87(2)(b) came out of his residence when he saw the incident taking place. He also recalled that PO Cardieri stood out from the other officers because he disregarded everything § 87(2)(b) said, told her to shut up multiple times, and raised his voice and used profanity toward her (**Board Review 12**). He could not specify what profanity PO Cardieri used. § 87(2)(b) did not spontaneously recount hearing PO Cardieri threaten to arrest § 87(2)(b). However, when asked if any officer threatened to arrest anyone, § 87(2)(b) recalled that PO Cardieri said something to the effect of, “I’ll arrest you,” to § 87(2)(b).

As noted above, the BWC footage captured the bulk of the initial incident, when officers separated the parties and discussed the incident. However, the officers who were recording switched off their BWCs once they determined that the incident was merely a dispute and not an ongoing assault with a weapon. None of the BWC footage captured § 87(2)(b)’s later argument with PO Yusim and PO Cardieri, and none of the footage showed any officer using profanity, threatening to use force, or threatening to arrest anyone. It should be noted that PO Kelly’s BWC footage (**Board Review 07**, at 01:06) shows that, in recounting her neighbor’s actions during the dispute to officers, § 87(2)(b) said that he threatened to “fuck [them] up,” which is the same phrasing she also attributed to PO Cardieri.

§ 87(2)(b) did not obtain any identifying information for PO Cardieri and could not provide a particularly detailed description of him. However, PO Cardieri was one of only four white male officers involved, and he acknowledged that he was the primary officer who spoke with § 87(2)(b) at the conclusion of the incident and told her that no enforcement action would be taken against the neighbor. As a result, the investigation identified PO Cardieri as the subject officer.

PO Cardieri was not interviewed until nearly 18 months after the investigation (**Board Review 28**). He recounted that he and his partner were the unit officially assigned to the radio run, and that he interviewed both parties and determined there was no weapon on scene. As a result, he concluded that the dispute was a civil matter, and he briefly tried to mediate between the parties before telling § 87(2)(b) that the officers were not going to arrest her neighbor. § 87(2)(b) became irate, got very close to the officers, began to scream, used profanity, and threatened to file IAB complaints against the officers. PO Cardieri could not recall any specific profane remarks § 87(2)(b) made. § 87(2)(b)’s response prompted § 87(2)(b) and § 87(2)(b) to also yell at the officers; PO Cardieri recounted that she actively got them involved in the interaction by encouraging them to tell the officers what happened. PO Cardieri stepped away and left the scene shortly afterward, as his unit received another radio run.

PO Cardieri denied that he ever raised his voice with § 87(2)(b). He denied that he ever threatened to arrest § 87(2)(b). § 87(2)(b) denied saying he was going to lock her up, denied saying, “I’m gonna fuck you up,” and denied that he or any other officer used profanity with her. He denied hearing any other officer say that specific profane phrase, and he denied that any other officer threatened to arrest anyone. PO Cardieri testified that he felt § 87(2)(b)’s behavior constituted disorderly conduct and that he might have issued her a summons if he had remained on scene, but he also emphasized that he did not want to arrest anyone during the incident and that the topic of § 87(2)(b) being arrested never came up. PO Cardieri testified that § 87(2)(b)’s behavior specifically constituted disorderly conduct because she was yelling in the street, getting other people involved in the dispute, and threatening the officers with IAB complaints. With regard to § 87(2)(b) being in the street, PO Cardieri explained that the officers were standing on the sidewalk and she was off the curb, beside her parked vehicle. PO Cardieri at one point denied that § 87(2)(b)’s behavior attracted the attention of anyone beyond § 87(2)(b) and § 87(2)(b). He later could not recall if there were any passersby that stopped to watch, but he thought not because there were very few people outside at that time. PO Cardieri confirmed that § 87(2)(b) did not commit any infractions other than disorderly conduct.

PO Yusim was interviewed approximately nine months after the incident (**Board Review 27**). He recounted that § 87(2)(b) did call him a liar when he was trying to listen to her account of the incident, and that she became more upset and angry near the conclusion of the incident when she learned that the officers would not be taking action against her neighbor. PO Yusim testified that § 87(2)(b) screamed at the officers, and that one of the men with her had to hold her back at one point. He denied that § 87(2)(b) was yelling at one officer in particular, and he recalled instead that she just yelled at the officers broadly. PO Yusim felt her behavior bordered on disorderly conduct. PO Yusim denied that any officer ever threatened to arrest § 87(2)(b). He could not recall if any officer used profanity with her, but he denied hearing any officer say they were going to “fuck her up.”

Police Officer Konstantin Nuksha was among the group of other officers who responded, and the investigation interviewed him nearly 15 months after the incident (**Board Review 32**). He did not have a detailed recollection of the incident and did not recognize a photograph of § 87(2)(b). He recalled hearing a lot of screaming and argument, but he could not recall if he heard civilians or officers use any profanity, and he could not recall whether there was any discussion regarding any civilian being arrested.

“A person is guilty of disorderly conduct when, with intent to cause public inconvenience, annoyance or alarm, or recklessly creating a risk thereof: (1) She engages in fighting or in violent, tumultuous, or threatening behavior; or (2) She makes unreasonable noise; or (3) In a public place, she uses abusive or obscene language, or makes an obscene gestures...or (5) She obstructs vehicular or pedestrian traffic.” NY CLS Penal Law §240.20 (**Board Review 30**).

“Critical to a charge of disorderly conduct is a finding that defendant’s disruptive statements and behavior were of a public rather than an individual dimension.” “The risk of public disorder does not have to be realized but the circumstances must be such that the defendant’s intent to create such a threat (or reckless disregard thereof) can be readily inferred.” In determining whether such an intent can be inferred, courts use “a contextual analysis that turns on the consideration of many factors, including ‘the time and place of the episode under scrutiny; the nature and character of the conduct; the number of other people in the vicinity; whether they are drawn to the disturbance and, if so, the nature and number of those attracted; and any other relevant circumstances.’” *People v. Baker*, 20 N.Y.3d 354 (2013) (**Board Review 31**). In *Baker*, the Court of Appeals found that

“isolated statements using coarse language to criticize the actions of a police officer, unaccompanied by provocative acts or other aggravating circumstances, will rarely afford a sufficient basis to infer the presence of the ‘public harm’ mens rea necessary to support a disorderly conduct charge.”

§ 87(2)(b) and § 87(2)(b) were consistent in their accounts of PO Cardieri, in particular, having a contentious interaction with § 87(2)(b) at the conclusion of the incident. PO Cardieri himself acknowledged that such an interaction took place, though he maintained that he did not raise his voice and remained professional. Although § 87(2)(b) and § 87(2)(b) generally supported § 87(2)(b)'s allegation that PO Cardieri used some form of profane language, they were unable to actually testify to any particular profane word or phrase he used, and they could not corroborate the specific remark alleged by § 87(2)(b) (“I’m gonna fuck you up”). Moreover, neither of them indicated that PO Cardieri ever threatened to use force against § 87(2)(b). In addition, the fact that the BWC footage showed § 87(2)(b) used the same phrasing to recount the neighbor’s remarks casts doubt on whether she commonly used that phrase as a colloquial expression of someone threatening to use force, as opposed to that phrase being the actual language that PO Cardieri allegedly used. § 87(2)(g)

Conversely, § 87(2)(b) and § 87(2)(b) both corroborated § 87(2)(b)'s allegation that PO Cardieri threatened to arrest her, and § 87(2)(b) recounted PO Cardieri using the same language alleged by § 87(2)(b). § 87(2)(g)

§ 87(2)(b) PO Cardieri cited disorderly conduct as the sole infraction for which § 87(2)(b) could have been arrested. § 87(2)(g)

PO Cardieri testified that § 87(2)(b) merely yelled, cursed, and asked § 87(2)(b) and § 87(2)(b) to tell the officers what took place in the dispute with the neighbor. § 87(2)(b) was not a bystander, as he was actively involved in the dispute, and § 87(2)(b) had already become involved in the incident before § 87(2)(b) began yelling. § 87(2)(g)

§ 87(2)(b) PO Cardieri did not testify that she ever actually blocked vehicular traffic.

§ 87(2)(g)

### Civilian and Officer CCRB Histories

- § 87(2)(b)
- PO Nicholas Cardieri has been a member of the NYPD for three years and has been a subject of one other CCRB complaint and two allegations, neither of which was substantiated. § 87(2)(g)

### Mediation, Civil, and Criminal Histories

- § 87(2)(b) declined to mediate this complaint.
- On November 1, 2021, the New York City Office of the Comptroller confirmed that no Notice of Claim had been filed regarding this incident (**Board Review 29**).
- According to the Office of Court Administration (OCA), § 87(2)(b) has no history of convictions in New York City (**Board Review 01**).

Squad: 5

Investigator: Angel Riddle      Inv. Angel Riddle      December 10, 2021  
Signature      Print Title & Name      Date

Squad Leader: Daniel Giansante      IM Daniel Giansante      December 10, 2021  
Signature      Print Title & Name      Date

Reviewer: \_\_\_\_\_

Signature	Print Title & Name	Date
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